Defendant at the rate of 15 per centum per annum, which I consider reasonable in all the circumstances of this case, from the dates on which they were lent up to the date of this judgment.

This appears to work out as follows:—

Interest on $500 for one month at 15% per annum
" " $400 " " " " " " "
" " $300 " " " " " " "
" " $200 " " " " " " " , and then

Interest on $900 from 7.5.40 to date of judgment at 15% per annum.

The resulting judgment debt will carry interest at the usual rate of 6 per centum per annum, and costs will follow the event.

Judgment accordingly.

Solicitors for plaintiff:—*Sisson & Delay.*

Solicitors for defendant:—*Mendis & Ahlip.*

IN RE LIM KENG KOOI, AN ADVOCATE AND SOLICITOR.

[Original Civil Jurisdiction (McElwaine, C.J., S.S., Terrell, Ag. C.J., F.M.S. and Carey, J.) May 21, 1941]

Advocates and Solicitors Ordinance S. 25—grossly improper conduct in the discharge of professional duty—breach of Rule 10 of the Penang Bar Committee Rules.

On an application by the Disciplinary Committee to call upon the respondent to show cause why he should not be struck off the Rolls of the Court or suspended from practice or censured or otherwise dealt with it was proved that he did not keep a separate clients' account with a bank and that he received moneys due to a client who was a beneficiary of an estate and that he improperly retained such moneys despite repeated applications by the guardian of the beneficiary and that he denied that he had received such moneys.

Held, (1) The rule requiring a Solicitor to keep a separate clients' account with a bank is a legal and not merely a moral obligation

(2) that the evidence was overwhelming to show that there had been misrepresentation and deceit on the part of the respondent, and that he had been guilty of grossly improper conduct.

Cases referred to:—

(1) *In re Sparks,* 17 C.B. (N.S.) 727.
(2) *Guilford v. Sims,* 13 C.B. 370.
(3) *In re a Solicitor,* 11 T.L.R. 169.
(4) *In re an Advocate and Solicitor,* 9 M.L.J. 253.

TRIAL.

Samuel & Gurcharan Singh for Disciplinary Committee.

Ong Huck Lim for Respondent.

Storr (Crown Counsel) for Attorney-General.

The judgment of the Court (McElwaine C.J. (S.S.), Terrell Ag. C.J., (F.M.S.) and Carey J.) was as follows:—

An order was made on the application of a Disciplinary Committee appointed under section 33A of the Advocates and Solicitors Ordinance calling upon the respondent to show cause why he should not be struck off the Rolls of the Court or suspended from practice or censured or otherwise dealt with.

The facts are not in dispute. Shortly those facts are:—

(a) Goh Gaik Kee by her will left $1,000.00 to Chung Kok Soon, the infant son of Lee Sau Yeng;
(b) Khoo Chong Yean a trustee of the will paid this $1,000.00 to the respondent on 28th August 1939 for payment to the beneficiary;
(c) The respondent retained this money until October 1940 when in consequence of inquiries made by the police he paid it;
(d) Messrs. Presgrave & Matthews were at all material times solicitors for Lee Sau Yeng the guardian of the infant beneficiary appointed by the will of the said Goh Gaik Kee;
(e) Messrs. Presgrave & Matthews made repeated applications to the respondent for payment of this $1,000.00;
(f) The respondent wrote letters to Messrs. Presgrave & Matthews which can only be construed as denials that the trustee had as yet paid the money.

It is only necessary to refer to a few extracts from the correspondence.

On September 6th 1939 Presgrave & Matthews wrote to the respondent "Kindly send us the sum of $1,000.00 referred to in our letter of 12th July last," to which respondent replied on 8th September "I shall be seeing my client during the week-end." In reply to a further letter of 13th September the respondent wrote "My client has been very ill. It will have to be a few more days before payment can be made". That the "client" was Khoo Chong Yean the trustee who had paid the $1,000.00 is apparent from a letter of the 19th September, "my client died on 16th", that being the date of the death of Khoo Chong Yean. On 3rd October the respondent wrote "Madam Tan Kim Heoh (the second trustee of the will) says that she will be in a position to make payment in two or three weeks' time". This woman was a nominal trustee who had none of the assets of the estate in

her hands. Finally, Messrs. Presgrave & Matthews having written that they would have to commence proceedings against Madam Tan Kim Heoh, the respondent wrote on 12th January 1940 "I shall make another effort to get in touch with my client (Madam Tan Kim Heoh) but if I cannot succeed then I think perhaps you had better commence proceedings straight away."

That is, that the remaining trustee of the will should be sued for a legacy already paid to the respondent by the first trustee for payment to the beneficiary.

The respondent entered the sum of $1,000.00 in his Clients' Account Book. He did not pay it into any bank account. He kept no separate client account with a bank as required by Rule 10 of the Penang Bar Committee Rules regulating the practice and etiquette of the Penang Bar (G.N. 3138/1936) made under section 31 of the Advocates & Solicitors Ordinance. This is a legal and not merely a moral obligation.

At no material time until 10 a.m. on 4th October 1940, after he had issued the cheque by which he paid over this sum of $1,000.00, had the respondent anything but a nominal balance in his bank account.

The evidence was sufficient to sustain a conviction under section 403 of the Penal Code.

Section 25 of the Advocates & Solicitors Ordinance enacts that an advocate shall be liable to be struck off the Roll or suspended or censured if he has (among other things) "been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such breach of any rules of usage or conduct made by a Bar Committee . . . . as in the opinion of the Court amounts to improper conduct".

On behalf of the respondent we were referred to *In re Sparks*[1]; *Guilford v. Sims*[2] in which what the Court was considering was fraud or no fraud, and in the latter case the Court held that absence of wilful deceit negatived fraud. In *in re a Solicitor*[3], Wills, J. said he saw no evidence of any misrepresentation or deceit of the attorney. Under the Colony Ordinance we have to consider not only fraudulent conduct, but also grossly improper conduct.

We consider that the letters to which we have referred provide overwhelming evidence of misrepresentation and deceit. The respondent was pretending that the money had not already been paid to him by the trustee.

We were also referred to the recent Federated Malay States case of *In re an Advocate and Solicitor*[4].

In that case there appears to have been no deceit, a circumstance which differentiates it from the present case. But we have difficulty in following that case because the Court there said "it is extremely reprehensible conduct on the part of any advocate who obtains money for distribution to the beneficiaries of an estate, to retain that money in his possession for twelve months without taking any steps whatever to distribute the sums to those entitled, even and although there may be costs or fees due to him in regard thereto".

In our opinion "extremely reprehensible conduct" is the same thing as grossly improper conduct which is conduct for which, under the Federated Malay States Enactment and under the Colony Ordinance, an advocate can be punished.

We are of opinion that grossly improper conduct in the discharge of his professional duty by the respondent has been established.

We direct that he be struck off the Rolls with costs agreed at one hundred dollars.

Respondent struck off the Rolls.

REX vs. BAHADUR SINGH AND ANOTHER.

[Appellate Criminal Jurisdiction (McElwaine, C.J.)

August 1, 1941]

Traction Engines and Motor Cars Ordinance (Cap. 214)—Rule 15A (1) of Rules thereunder—Load on lorry not to exceed sum of registered axle weights of lorry—Meaning of "load."

The defendants were charged with carrying on a motor lorry a load which exceeded the sum of the registered axle weights of the lorry contrary to Rule 15A (1) of the Rules made under the Traction Engines and Motor Cars Ordinance (Cap. 214). A question arose on the interpretation of the rule whether the rule allowed a load not exceeding the sum of the registered axle weights to be placed on the lorry or whether the rule meant that the maximum load which could be placed on the lorry was the difference between the sum of the registered axle and the weight of the lorry unloaded.

Held, that having regard to the definition of "axle weight" the reasonable interpretation of Rule 15A was that the maximum load a lorry might impose on the road was the sum of its registered axle weights and therefore that the maximum weight of cargo which could be put in the lorry was the sum of the registered axle weights minus the weight of the lorry as defined in the Ordinance.

CRIMINAL APPEAL.

Mark Morrison for the defendants.

C. H. Butterfield Crown Counsel for the Crown.